Office - Supreme Court, U.S
FILED
SEP 26 1984
ALEXANDER L. STEVAS,
CLERK

NO. 84-330

In The
Supreme Court Of The United States

OCTOBER TERM, 1984

GAYNOR-STAFFORD INDUSTRIES, INC.,
Plaintiff-Petitioner,

v.

WATER POLLUTION CONTROL AUTHORITY OF THE TOWN OF STAFFORD AND THE TOWN OF STAFFORD,
Defendants-Respondents.

ON PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWARD MUSKA
PARADISO & MUSKA
4 East Main Street
Stafford Springs, CT 06076
(203) 684-4221

Attorneys for Respondent

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY 4

ARGUMENT:

I. THE DETERMINATION OF WHO IS TO BE ASSESSED FOR A LOCAL IMPROVEMENT IS A MATTER OF LOCAL LAW, AND THERE IS NO REQUIREMENT IN THE EQUAL PROTECTION CLAUSE THAT ALL BENEFITTED PROPERTIES MUST BE ASSESSED 5

II. THERE WAS NO TAKING OF PROPERTY WITHOUT JUST COMPENSATION BECAUSE THE SPECIAL BENEFIT TO THE PETITIONER'S PROPERTY EXCEEDED THE ASSESSMENT 6

III. THE PETITIONER WAS NOT DENIED THE RIGHT TO AN IMPARTIAL DECISION MAKING PROCESS BY THE RESPONDENT AUTHORITY 7

CONCLUSION 8

TABLE OF AUTHORITIES

Page

Cases:

Briscoe v. Rudolph, 221 U.S. 547, 31 S. Ct. 679, 55 L. Ed. 848 6

French v. Barber Asphalt Paving Co., 181 U.S. 324, 45 L. Ed. 879, 21 S. Ct. 625 5

Gibson v. Berryhill, 411 U.S. 564 7

Goldsmith v. George Prendergast Construction Co., 252 U.S. 12, 40 S. Ct. 273, 64 L. Ed. 427 5

Milheim v. Moffat Tunnel Improvement District, 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 5

Voigt v. Detroit, 184 U.S. 115, 22 S. Ct. 337, 46 L. Ed. 459 6

Webster v. Fargo, 181 U.S. 394, 21 S. Ct. 623, 45 L. Ed. 912 6

Withrow v. Larkin, 421 U.S. 35, 43 L. Ed. 2d 712, 95 S. Ct. 1456 7

STATEMENT OF THE CASE

This action is an appeal from the levying of a sewer assessment against property owned by the Petitioner in Stafford, Connecticut. The assessment was to pay for the cost of construction of a sewer treatment plant in the Town of Stafford. On July 19, 1982, the appeal was referred to State Referee William Barber for trial and entry of judgment. The case was tried on October 12, 13 and 14, 1982, and on November 22, 1982, State Referee William Barber entered final judgment for the Respondents dismissing the appeal. On December 10, 1982, the Petitioner appealed to the Supreme Court of the State of Connecticut, which upheld the judgment of the trial court. A Motion To Reargue was denied by the State Supreme Court on May 30, 1984, and the Petitioner then filed a Petition For Writ Of Certiorari which is now before this Court.

On June 19, 1967, the Respondent was ordered by the State of Connecticut Water Resources Commission to construct a sewage treatment plant to provide secondary sewage treatment to the Town of Stafford. In order to construct the plant, the Respondent hired the Minges Engineering Associates to do a study of the sewage needs of the Town of Stafford. Salvatore Palaia, an engineer then working with that firm, then prepared that study and in doing so made measurements and tests of the quality and quantity of sewage flow going into the existing system and the quality and quantity of flow from the various industrial properties, including that of the Petitioner.

Based on these tests and measurements, it was determined that the Petitioner was producing an estimated waste flow of 1,250,000 gallons of sewage per day. Based on this and other projections, Mr. Palaia designed a sewage treatment plant with a capacity of 2,000,000 gallons per day and allowed for capacity of 900,000 gallons per day for the Petitioner's sewage.

The Respondent then proceeded to construct the sewage treatment plant. The Respondent applied for and received Federal and state financial assistance. The total cost of construction of the plant was $2,551,242.05, of which the Respondent's share was $383,251.78. The plant was completed in January, 1974.

In June, 1980, Mr. Palaia calculated industrial cost recovery assessments against the various industrial users, including an assessment of $172,463.30 against the property of the Petitioner. These assessments were arrived at by formulas published by the Environmental Protection Agency in a pamphlet entitled, "Federal Guidelines For Equitable Recovery Of Industrial Waste Treatment Costs In Municipal Systems." The Respondent approved the assessments at its meeting of June 3, 1980.

At this meeting, one of the Authority members voting for the assessments was William Sorenson, an officer of Warren Woolen Company, one of the benefitted industries. It is the claim of the Petitioner that Mr. Sorenson was improperly biased in voting for the assessments because his industry's assessment was affected by the amount for which the Petitioner was assessed. In fact, there was no connection between the two assessments. The Petitioner's assessment was determined by a formula which used as its variables the Town's cost of constructing the plant, the total design flow of the plant, and the Petitioner's expected flow. Mr. Sorenson was in no way benefitted or prejudiced by this vote.

At the trial before State Referee Barber, the Respondent presented evidence on the issue of special benefits. The Respondent presented evidence that it would cost the Petitioner approximately $1,000,000 to treat its own sewage, that the highest and best use of the Petitioner's building was a textile facility and that the failure to provide sewage treatment would depress the value of the

building by $257,000. The Respondent's evidence showed that the special benefit was in excess of the sewer assessment.

Based on this testimony, the Trial Referee found that the assessment was not in excess of the special benefits to the property.

SUMMARY

I. THE DETERMINATION OF WHO IS TO BE ASSESSED FOR A LOCAL IMPROVEMENT IS A MATTER OF LOCAL LAW, AND THERE IS NO REQUIREMENT IN THE EQUAL PROTECTION CLAUSE THAT ALL BENEFITTED PROPERTIES MUST BE ASSESSED.

II. THERE WAS NO TAKING OF PROPERTY WITHOUT JUST COMPENSATION BECAUSE THE SPECIAL BENEFIT TO THE PETITIONER'S PROPERTY EXCEEDED THE ASSESSMENT.

III. THE PETITIONER WAS NOT DENIED THE RIGHT TO AN IMPARTIAL DECISION MAKING PROCESS BY THE RESPONDENT AUTHORITY.

ARGUMENT

I. THE DETERMINATION OF WHO IS TO BE ASSESSED FOR A LOCAL IMPROVEMENT IS A MATTER OF LOCAL LAW, AND THERE IS NO REQUIREMENT IN THE EQUAL PROTECTION CLAUSE THAT ALL BENEFITTED PROPERTIES MUST BE ASSESSED.

Whether the expense of paying for a public improvement shall be paid out of the general treasury, or be assessed upon the abutting or other property specially benefitted, and in the latter case, whether the assessment shall be upon all property found to be benefitted, or only upon the abutters is considered to be a question of legislative expediency. *French v. Barber Asphalt Paving Co.*, 181 U.S. 324, 342, 45L Ed. 879, 21 S. Ct. 625. A special assessment will not be held violative of the equal protection clause unless there is manifest and unreasonable discrimination in fixing the benefit assessments. *Milheim v. Moffat Tunnel Improvement District*, 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194, *Goldsmith v. George Prendergast Construction Co.*, 252 U.S. 12, 40 S. Ct. 273, 64 L. Ed. 427.

In this case, the Respondent levied benefit assessments against the four largest industrial users of the Stafford sewer system. These industries were chosen in order to comply with a formula determined by the Environmental Protection Agency, which formula was a condition of the Respondent's Federal grant. The purpose of this formula was to ensure that large industrial polluters pay the cost of construction of sewage treatment plants which were designed to treat their pollutants. In this particular case, the four industries in question were producing 60 per cent of the effluent to be treated by the Stafford sewer system.

To treat these industries differently was not unreasonable, but was in fact, very reasonable. As these industries were having a much greater impact on the sewage system than other users, a system of assessment which is limited to these industries is reasonable in accordance with Fourteenth Amendment requirements. The decision of the Connecticut Supreme Court in holding these assessments to be reasonable is in agreement with the decisions of this Court, and, therefore, there is no reason for this Court to review the state court's decision on this issue.

II. THERE WAS NO TAKING OF PROPERTY WITHOUT JUST COMPENSATION BECAUSE THE SPECIAL BENEFIT TO THE PETITIONER'S PROPERTY EXCEEDED THE ASSESSMENT.

It is within the power of the legislature of a state to create special taxing districts and to charge the cost of a local improvement in whole or in part upon the property in said district, either according to valuation or superficial area or frontage. *Webster v. Fargo,* 181 U.S. 394, 21 S. Ct. 623, 45 L. Ed. 912. Private property is not taken for public use without compensation, where there is nothing to show that the actual assessments thereunder are in substantial excess of the benefits. *Briscoe v. Rudolph,* 221 U.S. 547, 31 S. Ct. 679, 55 L. Ed. 848. The rule or standard of assessment sufficient to satisfy the constitutional guaranty of due process of law is furnished by a statute which provides that a municipal council may assess the whole, or such part as it may deem just, of the cost of a local improvement, upon such lands in the vicinity thereof as are benefited thereby, and limits the amount of the assessment upon each lot to the amount of benefits. *Voigt v. Detroit,* 184 U.S. 115, 22 S. Ct. 337, 46 L. Ed. 459.

Summarizing, this Court has always held that it will not find a special assessment to be contrary to either the

due process clause or the just compensation clause of the Fifth Amendment unless the assessment is substantially in excess of the benefits to the property.

In this case, both the trial court and the Connecticut Supreme Court made an inquiry into the special benefits to the property. The state Supreme Court found that the determination that there was a sufficient special benefit was amply supported by the evidence presented on trial. While the Petitioner may disagree with the theory propounded by the Respondent, which theory was accepted by the state courts, this disagreement is not sufficient so as to justify a review by this Court. There, therefore, is no issue here requiring a review by this Court.

III. THE PETITIONER WAS NOT DENIED THE RIGHT TO AN IMPARTIAL DECISION MAKING PROCESS BY THE RESPONDENT AUTHORITY.

This Court in a number of cases has set forth the constitutional standards for administrative due process. *Gibson v. Berryhill*, 411 U.S. 564. This Court has held that where an adjudicator has a pecuniary interest in the outcome of a case, or where he has been the target of personal abuse, the probability of actual bias on the part of the decision maker is too high to be constitutionally tolerable. *Withrow v. Larkin*, 421 U.S. 35, 43 L. Ed. 2d 712, 95 S. Ct. 1456.

In the case now before the Court, the Petitioner has endeavored to prove that Mr. William Sorenson, an offical of the Warren Woolen Company, was financially benefitted by the assessment of the Petitioner's property. In fact, the assessment of the Warren Woolen Company property was completely independent of Petitioner's assessment.

Warren Woolen was assessed at $40,241.44 based on its anticipated flow into the Stafford sewer system. The Petitioner was assessed at $172,463.30 based on its anticipated flow. Even if the Petitioner's assessment were zero, there would still be no change in the Warren Woolen Company assessment of $40,241.44. There, therefore, was no financial benefit to Warren Woolen Company, or to Mr. Sorenson, as a result of the benefit assessment against the Petitioner. Mr. Sorenson was, therefore, an impartial decision maker in terms of the constitutional standards prescribed by this Court.

CONCLUSION

A review of the above indicates that any Fifth and Fourteenth Amendment issues that are involved in this case were decided by the Connecticut Supreme Court in accordance with applicable decisions of this Court. Furthermore, the facts are not such as to make these issues factors in this case. The Respondent, therefore, requests that the Petition For Writ Of Certiorari be denied.

THE RESPONDENT

By /s/ Edward Muska
Edward Muska
Its Attorney

Paradiso & Muska
4 East Main Street
Stafford Springs, CT 06076
(203) 684-4221